

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES**

October 26, 2010

1. CALL TO ORDER

Chair Johnson called the meeting to order at 11:04 a.m. at Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California.

A new Commissioner, Howard “Chip” Smith, Jr. Acting State Architect of the Division of the State Architect, introduced himself.

ROLL CALL

Commissioners Present:

Margaret Johnson, Chair
James Abrams, Vice Chair
Rocky Burks
Michael Dean
Richard Luehrs
Mark Martinez
Lillibeth Navarro
Mitchell Pomerantz
Anthony Seferian
Howard “Chip” Smith, Jr.
Betty Wilson

Commissioners Absent:

Tom Ammiano
Connie Conway
Senator Ellen Corbett
Thomas Harman
David Thorman
Pierce Welch

CBSC Members Present:

Jim McGowan

Also Present:

Donald Parks, Applied Technology, Inc.
(Teleconference)
Laura Williams, Californians for Disability Rights
Janice Kent, Past President of CASI
Dawn Anderson, CASP specialist

Commissioner Abrams led the Commission in the Pledge of Allegiance.

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Chair Johnson apologized for not having sign language interpreters or captioning for the meeting. She had been unaware that a contract had to be generated with the Department of General Services (DGS); for the next Commission meeting those services will be in place.

Chair Johnson recognized the recent passing of Paul K. Longmore, Professor of History and Director of the Institute on Disability at San Francisco State University. He was a longtime disability advocate.

Chair Johnson also recognized the passing of Paul Miller of the Equal Employment Opportunity Commission (EEOC), another inspiring and aggressive advocate for people with disabilities.

Commissioner Pomerantz and Commissioner Navarro expressed their appreciation for the work and lives of the two men.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Ms. Laura Williams, President of Californians for Disability Rights (CDR), addressed the idea of developing a protocol of materials for Commissioners when they go out into the community to attend public meetings. A standard packet of materials would ensure that everyone is focused on the Americans with Disabilities Act (ADA) and the Commission agenda in an appropriate manner.

Mr. Donald Parks, Applied Technology Inc., expressed the need for the CCDA to use broad language and definitions covering the scope of the disabled community. He suggested changing the term “building” to “facility” to help the public recognize the segment of the population with disabilities. The percentage of the population in wheelchairs is 1.3%, and four times that number of the population have communication disabilities – but it isn’t visually obvious to the public that a person may have communication disabilities.

Mr. Parks added that his organization is fully ready and able to help in any way that the Commission might deem appropriate in beginning a new era of accessibility in the state of California.

Vice Chair Abrams noted that he had spoken with Mr. Parks earlier that morning regarding some ideas that they had been working on, particularly as a result of Mr. Parks’ testimony last March. One of the issues Mr. Parks raised was the fact that very few California state agencies and local agencies were in compliance with the requirements of the ADA in having an ADA coordinator and making sure all programs are fully accessible as required by law.

In talking to Mr. Parks, some issues had come to Vice Chair Abrams’ mind to share with the Commissioners.

There are three components as far as government is concerned:

1. Are their physical facilities accessible as required by law?
2. Are programs and services accessible? The Department of Rehabilitation has always been the main state agency where accessibility issues end up by default.

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They do what they can, although they have no responsibility or mandate to be in charge of such things.

3. However, there are a great many services and functions that state agencies provide that are not accessible to the disabled public, for example, online DMV registration renewal online. Accessibility is not on their radar screen.

CCDA can make an immediate and significant impact on peoples' daily lives by making recommendations to other state agencies to issue regulations regarding not just physical facilities, but websites, services, and the like. Vice Chair Abrams respectfully urged the Commission to consider those kinds of projects as something that needs to be factored in as the Commission gets up and running.

Chair Johnson asked that this be placed on the Agenda as an item for a future meeting.

3. GENERAL BUSINESS ITEMS

1) General Business Items

a) Review/Approval of Meeting Minutes

Chair Johnson had corrections to the April Meeting Minutes regarding the bill numbers on page 7.

MOTION: Commissioner Abrams moved to approve the April 23, 2010 Meeting Minutes with the corrections above. Commissioner Navarro seconded. Motion carried with Commissioner Burks abstaining.

MOTION: Commissioner Abrams moved to approve the June 17, 2010 Meeting Minutes. Commissioner Navarro seconded. Motion carried with Commissioner Burks abstaining.

b) Selection of new Chairperson and Vice-Chairperson

Chair Johnson stated that she and Vice Chair Abrams were willing to continue in those offices. No other Commissioners came forward.

MOTION: Commissioner Burks moved by acclamation to have Chair Johnson and Vice Chair Abrams continue until December 31, 2011. Commissioner Wilson seconded. Motion carried unanimously.

c) Discussion regarding Commissioner terms - Public Members GC 8299.01(c)

Chair Johnson stated that when she reviewed the Commission terms, it appeared that Commissioner Abrams' and Commissioner Dean's appointments were up in January 2011.

Chair Johnson and Vice Chair Abrams researched the matter, and found that if the incumbent is not reappointed within 60 days, the office then becomes vacant.

Chair Johnson suggested putting together a briefing paper for the next Governor on what this Commission does, mentioning the current Commissioner vacancy for a representative of the disability community that Commissioner Burks had pointed out.

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d) Staffing

i. Executive Director position

Chair Johnson noted that CCDA had contracted with the Department of General Services (DGS) for HR services to assist with the search process.

Vice Chair Abrams reminded the Commission that last year they had approved the Executive Director position, plus an additional two and a half positions, as part of the staffing plan.

Vice Chair Abrams had put together a Duty Statement for the Executive Director position on a State form, of which the Commissioners had copies. Vice Chair Abrams provided an overview of the Duty Statement.

The Commissioners reviewed the Duty Statement together, ensuring that the concepts were present that they wanted to cover.

MOTION: Commissioner Martinez moved to accept the Duty Statement in concept as written. Commissioner Wilson seconded. Motion carried unanimously.

The Commissioners discussed how to proceed with the hiring process.

MOTION: Commissioner Pomerantz ??????? moved to affirm the process approved in June: for the Administration Committee to begin the process with the DGS HR Services to hire an Executive Director with all Commissioners participating in the process, with the addition that the final selection and offer of employment will be contingent upon approval of that individual by the Commission. Commissioner Wilson seconded. Motion carried unanimously.

e) Space and services

Chair Johnson reported that the CCDA has an MOU now with DGS for HR services. They are also handling budgeting and contracts for services at this point.

DGS is trying to find physical space for the CCDA.

f) CCDA “By-Laws”

Commissioner Burks reported that currently, the only Bylaws discussion point that was open was the representation of appointed members to the Executive Committee and Administration Committee.

MOTION: Commissioner Abrams moved that the Executive Committee should consist of the Chair, Vice Chair, and Chairs of the four committees. Commissioner Dean seconded. Motion carried unanimously.

g) Discussion regarding continuing disabled access lawsuits

Vice Chair Abrams stated that one of the primary moving forces of this Commission was to deal with the number of lawsuits being filed in California – particularly against private businesses – alleging violations of the ADA, the California Building Code, the Unruh Civil Rights Act, etc.

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He went on to say that one of the key pieces of SB 1608 was the implementation of a judicial process that can be utilized by building owners who have had a Building Access Specialist inspect their properties and put a plan of renovation in place.

Meanwhile people in the business community have continued to complain to their legislators.

It would be useful for this Commission to make public its website and any other appropriate means, to show the basic nature of its work as we go forward. This would show that we are working on the issue.

Commissioner Burks noted that one of the real problems with 1608 is that it gives a false sense as to the right of individual action in terms of federal law compared to state law. 1608 is a state law that has little or no effect on federal law. People are totally confused, and whatever CCDA can do to educate them would be of benefit.

Commissioner Wilson agreed that CCDA needs to reach out and help to clarify what the ADA is, and what the Health and Safety Codes are. The CASP and Education Committee could begin to handle this issue.

Commissioner Martinez agreed with Commissioner Burks. He remarked that once we do have staff on board it will enhance our ability to get our message out.

Commissioner Abrams wanted to see to what extent we can gather statistics on the number of CASP inspections, the number of people who have actually filed for the early settlement conference, etc. This would help us figure out what kind of education is needed.

Commissioner Smith commented that the DSA is aware of these issues.

Commissioner Luehrs remarked that SB 1608 relies heavily on the business of establishing and maintaining a system of CASP educators.

Commissioner Dean commented that the Civil Enforcement Committee was scheduled to meet in November. Many of the issues being discussed here will be taken up. The Committee will look at what kind of a fact-finding process should be used.

Commissioner Navarro wondered how updated the courts are that receive these lawsuits. Chair Johnson suggested that the Civil Enforcement Committee reach out to involve the Judicial Council in this issue.

Public Comment

Ms. Williams stated that from the viewpoint of CDR, something like 85-90% of businesses have never met their obligations under either state law or federal law for access compliance. We shouldn't be asking why there are so many lawsuits, but why there aren't more. She was concerned about the perception in the business community of what 1608 did: it made them feel that people in wheelchairs and people with disabilities could no longer sue them for access. That is just plain wrong, and we need to make this clear among the business community.

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Ms. Janice Kent, CASP architect and past President of the Certified Access Specialist Institute (CASI), commented that what she had seen in the two years since 1608 had gone into effect, was that much of the public is under the misconception that because of this bill there will no longer be any lawsuits. They don't realize that lawsuits are now limited not per item but per visit. She had seen that the majority of business owners hire CASP inspectors in reaction to a lawsuit.

Ms. Dawn Anderson, CASP specialist, American Institute of Architects, California Council (AIACC) brought to the attention of the Commissioners that at the end of this year our regulations for California are to meet or exceed the ADA. The clients she sees are concerned that their architectural plans are obtained from cities that are going under litigation from the ADA. It's important for this Commission to answer the public on why state regulations do not meet federal civil law.

h) Senate Bill 1608 brochure – Joint development

Chair Johnson stated that Disability Rights California, California Foundation of Independent Living Centers had been approached by the Consumer Attorneys of California to put together a pamphlet explaining 1608. They had asked if the CCDA would also like to participate.

The Consumer Attorneys of California were interested in funding the pamphlet. They have done a draft that Chair Johnson will make available when possible.

In response to a question from Commissioner Pomerantz, Chair Johnson explained that the audience would be businesses – it's a public service to let them know what they need to do to comply with the law to avoid an access lawsuit. It would explain CASP and include a little about CCDA.

In response to a question from Commissioner Burks, Chair Johnson explained that Consumer Attorneys of California is an organization of plaintiff attorneys. Commissioner Burks suggested a joint review between the CASP and Education Committee and the Civil Enforcement Committee.

Vice Chair Abrams stated that there are some trade associations within the business community to whom an invitation should be extended to participate.

Commissioner Burks cautioned to be mindful of the Bagley-Keene Act.

Public Comment

Ms. Anderson asked whether the pamphlet would be downloadable from the CCDA website; Chair Johnson replied that it would. Ms. Anderson then ensured with Chair Johnson that other organizations could collaborate with the CCDA on other types of publications or documentation.

MOTION: Vice Chair Abrams moved that the Commission approve proceeding with the SB 1608 pamphlet joint development project, to include invitations to appropriate interest groups to participate, and to assign the lead position to Commissioner Dean, as head of the Civil Enforcement Committee; keeping in mind that the Bagley-Keene Act will

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govern communications between all Commissioners. Commissioner Burks seconded. Motion carried unanimously.

i) Report on ADA 20th anniversary celebration

Vice Chair Abrams reported that the Department of Rehabilitation and many other agencies participated actively in celebrating the 20th anniversary of the ADA. Last year the CCDA had adopted a motion to support and participate in the celebration.

In conjunction with the 20th anniversary, many developments had been going on with the Department of Justice, the Congress, etc. which Vice Chair Abrams would cover in Agenda Item #6.

j) Los Angeles building not ADA compliant

Commissioner Pomerantz had requested a review from DSA of the Los Angeles CalTrans Building on First Street, constructed three or four years ago.

Commissioner Burks noted that there had been a special statute created for CalTrans to be able to self-certify.

Ms. Williams reported that she had discovered that the elevators don't service all floors, although the building was DSA designed and built. She had tried to file a complaint via the website with the ADA coordinator, but had received no response. Under federal law a response is required.

Vice Chair asked Ms. Williams to do what he had asked of Mr. Parks: to make a list of agencies that are not aware or compliant of ADA and accessibility. She noted that the State of California has never provided an ADA coordinator. When the new Administration comes in this January, CCDA should impress upon them that we need a state ADA coordinator who oversees the agency coordinators.

4. BUDGET

a) Fiscal Year 2010/2011 budget

Chair Johnson stated that FY 2010-11 budget was approved. CCDA's budget line item is #8790.

b) Status of Budget Change Proposal (BCP) for Fiscal Year 2011/2012

Last month Chair Johnson submitted CCDA's Budget Change Proposal of \$500,000 for FY 2011-12.

Next year, hopefully CCDA will have staff hired and will have a better sense of how much money we're spending; then we'll ask for more than the \$500,000 we got for this fiscal year.

c) Contracts with Department of General Services (DGS)

As Chair Johnson reported previously, she contracted with DGS for accounting services and HR services.

5. COMMITTEES

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Chair Johnson thanked Commissioner Navarro for providing her with a written report on the activities of the Accessibility Enhancement Committee. Chair Johnson reminded the other committees that the Chairs should be doing a short report explaining their activities. She stressed that the CCDA does need to set end times for meetings. Part of the problem is that people with disabilities who rely on Paratransit need to know when to have Paratransit return to get them.

d) Committee Reports by Committee Chairpersons

○ **Accessibility Checklist Committee**

Chair Luehrs reported that the committee did not have a meeting during the hiatus. They had been using the checklist template from the DSA. From recent conversations with Mr. Doug Hensel, the committee would be making available a more comprehensive checklist on Monday.

○ **Administration Committee**

Chair Abrams had nothing to add to his reporting earlier in the meeting.

○ **Accessibility Enhancement Committee**

Chair Navarro reported that the committee had held an informal teleconference during the summer, but without a quorum. The committee had discussed new federal regulations on highrise buildings and their emergency exits.

The committee agreed to add new members; with two members who are in the Legislature, it's hard to achieve a quorum. Ms. Williams had agreed to be part of the committee. Mr. Clyde Reed, a practicing contractor, had also agreed to join the committee.

Chair Johnson commented that normally appointments to the committees have been done by the Chair of the Commission. She explained that recommendations should come first to her, and then she would make the appointments. (Commissioner Burks clarified the procedure by reading from the Bylaws.)

○ **CASP & Education Committee**

Chair Burks reported that the State furlough dates for September had been flip-flopped; also the resignation of the State Architect affected the committee. The upshot was that the committee had not met, although Chair Burks was able to have a conversation with Commissioner Smith.

Chair Burks hoped to have video/teleconferencing for the committee because of the significant stakeholder participation.

The issue of CASP and continuing education was going to figure prominently in upcoming Commission meetings.

○ **Civil Enforcement Committee**

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Chair Dean reported that an organizational meeting was scheduled for this new committee in November. He noted that one topic to address was outreach.

In response to a question from Commissioner Navarro, Vice Chair Abrams stated that the litigation part of 1608 was a key component of what drove the legislation – but that component doesn't define 1608. This Commission is intended to cover any and all components of disability; everything is on the table.

Commissioner Burks and Chair Johnson noted that with the wide scope that the Commission needs to address, each standing committee needs to identify its charge and then prioritize.

Public Comment

An audience member asked for upcoming committee meeting dates and times, which Chair Johnson supplied. She pointed out that the schedule is on the website.

6. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS

Chair Johnson reported on some items she had addressed in the past.

- Assembly Concurrent Resolution (ACR) 123 acknowledged that the memorial project existed, and set aside a California memorial project remembrance day in September. It was approved by the two Houses.
- SB 1256 created an Ed Roberts Day. It was signed by the Governor.
- AB 1680, a new Civil Rights Act bill that said that people did not have to waive protections to enter a contract, was vetoed by the Governor.
- AB 1855 required the DMV to advise people with Veterans' plates that they may be exempt from paying registration fees. It was signed by the Governor.
- AB 2781 allowed correctional facilities to parole people with disabilities from prison. It was signed by the Governor.
- AB 2516 was a revision to the definition of discrimination in the California Fair Employment and Housing Act. It failed in one of the budget committees.
- ACR 162 made a disability history recognition. It was approved by the two Houses.

Commissioner Smith gave a status of the Title 24 certification by the federal government. He had been working closely with the DSA Accessibility Unit to ensure that it will be submitting a final package to the Department of Justice (DOJ) in December. The package will be based on current codified requirements. They expect to obtain certification next year.

Vice Chair Abrams reported that early in the process of forming the Commission, he had taken all of the items out of the government code, broken them down by committee, and

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sent them to the committee chairs. He will send them to Mr. McGowan for distribution to all CCDA Commissioners.

Vice Chair Abrams also reported that the DOJ had taken action to change the regulations for Title 2 and Title 3 of the ADA. Most go into effect in March 2011.

Commissioner Smith noted that in terms of the 2010 California Building Code, which he believed would be certified next year, the issue will remain that in March 2012, CCDA will be confronted with a new issue: a newly-effective set of federal standards.

Public Comment

Ms. Williams pointed out that in Chicago, the DOJ Access Board Public Hearing was charging a \$25 fee to attend via webinar or teleconference site. She requested for the CCDA to work with the Access Board to make certain that when the public hearing is held on the West Coast, every Californian regardless of wealth can attend.

Ms. Anderson commented that there was very little change to the DSA 2010 regulations and that they were posted on the DSA website. She requested that the DSA make the 2012 accessibility regulations open to public comment.

Vice Chair Abrams reminded everyone in attendance to help the Commissioners identify people who would be good candidates for the Executive Director position.

Commissioner Navarro commented that the city of Los Angeles has the opportunity to make broadband free; in Mexico it's free. In terms of disability access, particularly for people who are blind, it's their way to access the world. There should be a push for all cities to have free Internet access.

7. FUTURE AGENDA ITEMS: The Commission may discuss and set for action on future agendas, procedural and substantive items relating to Commission mandates, projects, responsibilities, Commission policy, and administrative matters.

The Commissioners had a brief discussion on future items.

- Commissioner Burks requested having the Director of CalTrans come to a meeting to explain the settlement.
- Commissioner Navarro expressed interest in examining accessibility of publicly funded housing.
- Looking at 1608 as an element in the private business sector, Commissioner Burks suggested having leadership from relevant organizations come before the Board – such as the state and federal Chamber of Commerce, the state and federal American Institute of Architects (AIA), and California Building Officials (CALBO).

8. ADJOURNMENT OF CCDA MEETING

Chair Johnson adjourned the meeting at 2:48 p.m.